

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2009-2242

Issue No: 1005; 3008

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 16, 2009

Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on April 16, 2009. The claimant personally appeared and testified.

ISSUES

(1) Did the department properly terminate the claimant's Family Independence Program (FIP) benefits and accordingly sanction the claimant's Food Assistance Program (FAP) benefits for Office of Child Support (OCS) noncooperation in August, 2008?

(2) Was the claimant properly disqualified from Medical Assistance (MA) benefits for noncooperation with the Office of Child Support (OCS) requirements on April 30, 2008?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The claimant was a FIP and FAP recipient when the Office of Child Support issued a Noncooperation Notice, indicating the claimant had not been cooperative in establishing paternity. The notice specifically stated the claimant was considered to be noncooperative because the claimant failed to respond to two letters to contact the OCS by June 5, 2008 and by July 3, 2008 (Department Exhibit #5).

2. The OCS mailed the First Customer Contact Letter to the claimant on May 16, 2008. This letter indicates that the claimant is to contact the OCS specialist by Thursday June 5, 2008 and provide identifying information about the non-custodial parent (Department Exhibit #6).

3. The OCS mailed the Final Customer Contact Letter to the claimant on June 13, 2008. This letter indicates that the claimant is to contact the OCS specialist by Thursday July 3, 2008, and provide identifying information about the non-custodial parent (Department Exhibit #14).

4. The department closed the claimant's FIP case and accordingly sanctioned the claimant's FAP case for the amount of the FIP benefit on August 12, 2008 (Department Exhibits #1 – 4)

5. Since no employee from the OCS appeared for the hearing, this Administrative Law Judge requested further information from the department as the claimant was disputing her noncooperation status. The record was left open until April 30, 2009, to allow the department to obtain information regarding calls the claimant made to OCS prior to the case closure. OCS documentation indicates the claimant called the OCS specialist on June 4, 2008, and left a voice mail message for the specialist. The specialist attempted to return her call on June 5, 2008, but there was no answer from the claimant and no voice mail (Department Exhibit #16).

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Department policy states:

DEPARTMENT PHILOSOPHY

Families are strengthened when children's needs are met. Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department including the Office of Child Support (OCS), the Friend of the Court and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. PEM 255, p. 1.

DEPARTMENT POLICY

FIP, CDC Income Eligible, MA and FAP

Clients must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf

of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending.

Absent parents are required to support their children. Support includes **all** the following:

- . Child support
- . Medical support
- . Payment for medical care from any third party.

Note: For purposes of this item, a parent who does not live with the child due solely to the parent's active duty in a uniformed service of the U.S. is considered to be living in the child's home.

Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, denial of program benefits, and/or case closure, depending on the program.

Exception: A pregnant woman who fails to cooperate may still be eligible for MA.

FIP

All rights to past, current and future child support paid for a FIP recipient must be assigned to the state as a condition of FIP eligibility. Spousal support included in a child support order must also be assigned. PEM 255, p. 1.

CHILD SUPPORT REFERRAL REQUIREMENTS BY PROGRAM

Who Must be Referred?

FIP, CDC Income Eligible, MA and FAP

Refer unmarried children who have no legal father or who have a legal parent absent from the home, to the OCS for child support action.

Exception: The following children are not referred to OCS:

- . Children whose absent parent is deceased.
- . Children adopted by a single parent only.
- . Teen and minor parents acting as the adult case member. PEM 255, p. 5.

COOPERATION

FIP, CDC Income Eligible, MA and FAP

Cooperation is a condition of eligibility. The following persons in the eligible group are required to cooperate in establishing paternity and obtaining support, unless good cause has been granted or is pending.

- Grantee and spouse.
- Specified relative/person acting as a parent and spouse.
- Parent of the child for whom paternity and/or support action is required.

Cooperation is required in all phases of the process to establish paternity and obtain support and includes **all** of the following:

- Contacting the SS when requested.
- Providing all known information about the absent parent.
- Appearing at the office of the prosecuting attorney when requested.
- Taking any actions needed to establish paternity and obtain child support (e.g., testifying at hearings or obtaining blood tests).

FIP

Cooperation includes repaying to the department any court-ordered support payments received after the payment effective date.

MA

Cooperation is required for an active deductible case once the first period of MA coverage is authorized. This requirement continues as long as the case is active and includes periods for which MA coverage is **not** authorized. PEM 255, p. 8.

Support Specialist Determines Cooperation

FIP, CDC Income Eligible, MA and FAP

The SS determines cooperation for required support actions. He/she will notify you of failure to cooperate.

Exception: You determine noncooperation for failure to return court-ordered support payments received after the payment effective date.

Cooperation is assumed unless and until you are notified of noncooperation by OCS. The noncooperation continues until you are notified of cooperation by OCS or cooperation is no longer an eligibility factor. PEM 255, pp. 8-9.

SUPPORT DISQUALIFICATION

FIP, CDC Income Eligible, MA and FAP

You will be notified of a client's failure to cooperate by the SS or the child support noncooperation report. Start the support disqualification procedure upon receipt of this notice.

Do **not** impose the disqualification if any of the following occur during the negative action period:

- . You are notified by OCS that the client has cooperated.
- . The case closes for another reason.
- . The noncooperative person leaves the group.
- . Support/paternity action is no longer a factor in the child's eligibility (e.g., the child leaves the group).
- . **For disqualifications based on failure to return court-ordered support**, the client cooperates with the requirement of returning court-ordered support payments or the support order is certified. PEM 255, p. 9.

Support Disqualification At Application

FIP, CDC Income Eligible, MA and FAP

Impose a support disqualification at application if:

- . There is a notice of noncooperation in the case record or the client appears on the noncooperation report; and
- . There is **not** a subsequent notice that the noncooperating member has cooperated; and

- Support/paternity action is still a factor in the child's eligibility; and
- Good cause has not been granted nor is a claim pending (see "GOOD CAUSE FOR NOT COOPERATING" in this item).

Note: If client is cooperating at reapplication, but has not served the minimum one-month penalty for FIP, determine FIP eligibility for the month following the penalty month. PEM 255, p. 10.

CDC Disqualification

CDC Income Eligible

Failure to cooperate without good cause results in ineligibility for CDC. Initiate CDC closure or deny the CDC application when a client has been determined noncooperative with child support. PEM 255, p. 10.

Removing a Support Disqualification

FIP, CDC Income Eligible, MA and FAP

Ask a disqualified person at application, redetermination or reinstatement if he/she is willing to cooperate. A disqualified person may indicate willingness to cooperate at any time.

Do **not** restore benefits to a disqualified person or reopen FIP or CDC income eligibility until the noncooperating person cooperates or support/paternity action is no longer needed. End the disqualification when:

- You are notified by OCS that the client has cooperated, or
- Support/paternity action is no longer a factor in the child's eligibility (e.g., child leaves the group), or
- For **FIP only**, the client cooperates with the requirement of returning court-ordered support payments, or the support order has been certified.

For **FIP and FAP only**, make sure that the minimum one-month disqualification has been served before restoring benefits or reopening. PEM 255, p. 12.

In this case, the claimant is disputing her placement by OCS on noncooperation status. The claimant testified that she called the OCS on numerous occasions prior to the required contact dates. The claimant testified that she called the OCS specialist several times in June and July, 2008 to provide whatever information the OCS needed. The claimant and the department were mailed noncooperation notices dated July 11, 2008. In the letter, the OCS worker indicates that the claimant did not contact the OCS specialist by the required dates of June 5, 2008 and July 3, 2008 (Department #5). No employee from the OCS appeared at the hearing to provide any testimony. Since the OCS action was the only issue in dispute, this Administrative Law Judge left the record open until April 30, 2009 and requested the department to submit information concerning any attempts made by the claimant to contact the OCS. The department did submit an email correspondence from the OCS specialist that indicates there is a log entry from June 5, 2008 that indicates on June 4, 2008 the claimant called and left a voice mail message. The specialist indicates she attempted to return the telephone call, but the claimant did not answer the telephone and there was no voice mail (Department Exhibit #16).

The claimant also testified that she had a conversation with DHS worker DO and explained to her she was having problems reaching the OCS specialist. The department was also requested to address a question to department worker DO prior to the closure of the hearing record to determine if DO remembered having any conversations with the claimant concerning claimant's inability to reach the OCS specialist. The DHS employee, DO, was not able to recall the content of the conversation and could not indicate if the conversation had taken place or not (Department Exhibit #15).

Department policy requires the claimant to cooperate in the process of identifying the child's parent and in establishing paternity. PEM 255. The initial documentation provided by the department indicates that the claimant was noncooperative because she failed to contact the

OCS specialist by June 5, 2008 and July 3, 2008. However, this is contradicted by the OCS log entry that indicates a voice mail message was left by the claimant on June 4, 2008 (Department Exhibit #16). Thus, the claimant did attempt to contact the office prior to the due date of June 5, 2008. The claimant also testified that she attempted to contact the worker several other times in June and July. There is evidence to suggest that the claimant did make a reasonable effort to contact the department and provide what was required of her. Based on this and the absence of any testimony to the contrary from OCS or DHS, this Administrative Law Judge finds that the department has not met their burden of showing the claimant was noncooperative with contacting the OCS specialist.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly terminated the claimant's FIP benefits and sanctioned the claimant's FAP benefits for OCS noncooperation.

Accordingly, the department's actions are REVERSED. The department shall:

1. Reinstate the claimant's FIP benefits and issue any retroactive benefits to the date of closure (August 12, 2008) that the claimant is entitled to.
2. Rebudget the claimant's FAP benefits back to August 12, 2008, removing the claimant's FIP sanction and issue the claimant the retroactive benefits due.

SO ORDERED.

/s/
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 18, 2009

Date Mailed: May 19, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

SLK [REDACTED]

cc:

[REDACTED]